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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,435

05/10/2005

Jean Paul Nelissen

GIV.P20715

4507

23575

7590

06/23/2008

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EXAMINER

DEES, NIKKI H

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

06/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,435	Applicant(s) NELISSEN ET AL.	
	Examiner Nikki H. Dees	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10 May 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

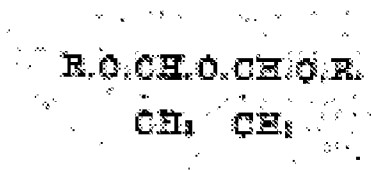
A person shall be entitled to a patent unless –

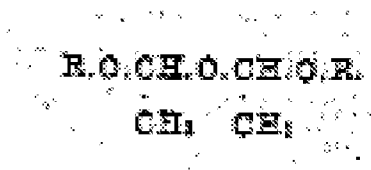
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Oon et al. (Oon, S.M. and D.G. Kubler. 1982. "Hydrolysis of Aldal Acetals." *J. Org. Chem.* Vol. 47. pp. 1166-1171).

3. Oon et al. teach the structure $RC(OR')HOC(OR')HR$ wherein R is Me and R' is Et. This is the same as applicant's claimed compound wherein $n=1$ and R_1 and R_2 are both $-CH_2CH_3$. These teachings anticipate Applicant's claims 1 and 2.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Fenne et al. (GB 661184).



5. Fenne et al. teach the structure  wherein R stands for ethyl. This structure is the same as Applicant's claimed compound wherein $n=1$ and R_1

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and R₂ are both –CH₂CH₃ (col. 1 lines 18-21). These teachings anticipate Applicant's claims 1 and 2.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fenne et al. (GB 661184).

8. Fenne et al. teach polyacetals of the general formula C₂H₅O[–CH(CH₃)–O]_n–C₂H₅ wherein the compound may be triacetal (n=3) or higher (col. 1 lines 26-34).

9. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have produced the compound above wherein n=6 or higher based on the teachings of Fenne et al. if a larger polyacetal were desired. This would not have required undue experimentation on the part of the artisan, and there would have been a reasonable expectation that the resulting compound would have possessed the desired structure.

10. Claims 4-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeSimone (4,280.011) in view of Fenne et al. (GB 661184).

11. DeSimone teaches a method for utilizing an acetaldehyde precursor for a flavoring agent, as well as a flavoring composition and comestibles comprising the flavoring agent in the form of an acetaldehyde precursor (col. 1 lines 12-18; col. 18 lines 31-67).

12. DeSimone is silent as to the specific structure of acetaldehyde precursor as claimed by Applicants.

13. Fenne et al. teach the acetaldehyde precursor as claimed by Applicants wherein $n=1$ and R_1 and R_2 are both $-\text{CH}_2\text{CH}_3$. They further provide motivation for making the compound wherein n is 5 to 10, as detailed above.

14. One of ordinary skill in the art at the time the invention was made would have been able to utilize the compounds as taught by Fenne et al. as acetaldehyde precursors for use in the invention of DeSimone. As DeSimone teaches that acetaldehyde precursors are desirable as flavoring agents in foodstuffs and Fenne et al. teach acetaldehyde precursors, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have tried the compounds of Fenne et al. in the invention of DeSimone in order to provide flavoring compositions for providing acetaldehyde flavors in foodstuffs as a person of ordinary skill has good reason to pursue known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation, but of ordinary skill and common sense. Further, because the compounds taught by Fenne et al. would function as acetaldehyde precursors as taught for flavoring agents by DeSimone, it would have

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been obvious to one of ordinary skill in the art to utilize the compounds as flavoring agents.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Nikki H. Dees
Examiner
Art Unit 1794

/Carol Chaney/
Supervisory Patent Examiner, Art Unit 1794